

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3377 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ARUNRAI J BHATT

Versus

GUJARAT AGRICULTURAL UNIVERSITY

Appearance:

MR YN OZA for Petitioner

MR SN SHELAT for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 10/03/2000

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order to direct the respondent to promote the petitioner to the post of Auditor Gr.I in the pay scale of Rs.700 - 1500 from December 10, 1980 and further to promote him in

the pay scale of Rs.1100 - 1600 from April 27, 1987. The petitioner has also prayed to quash and set aside the notice dated August 21, 1984 calling upon the petitioner to show cause as to why disciplinary proceedings should not be initiated against him.

2. The petitioner was appointed as Office Superintendent in the year 1972 with Gujarat Agricultural University. His case for promotion to Gr.II Accounts Officer / Audit Officer was considered in the year 1975 on the basis of his seniority as on March 31, 1975, but he was not found suitable for promotion and was therefore not promoted to the said post. Thereafter, the case of the petitioner was considered for promotion in the year 1976. At that time, the petitioner was facing departmental inquiry for misconduct of negligence in duties and inefficiency. During this period, Shri M.J.Patel, D.M.Vasavada, M.C.Mehta, J.H.Shashtri, G.B.Shah and Shri H.L. Pandya who were juniors to the petitioner, were promoted to the post of Accounts Officer / Audit Officer, which is a Class II post. The petitioner was promoted to the Gr.II service for the first time on May 13, 1977. However, the petitioner could not get the benefit of promotion because there was no post available against which he could have been promoted at that time. In the departmental inquiry which was held against the petitioner, an order was passed on January 7, 1978 holding that the case of the petitioner should not be considered for promotion to the post of Gr.II for one year. Under the circumstances, the case of the petitioner was not considered for promotion till January 7, 1979. During this period, Shri Vankar and Shri Mohile were also promoted to Class II post by an order dated May 29, 1978. The petitioner was promoted on April 13, 1979 on the Gr.II post in the pay scale of Rs.650 - 1200. However, by an order dated March 4, 1980, the petitioner was reverted to the post of Office Superintendent. That order was challenged by the petitioner in Special Civil Application No.571/80. The petition was allowed by the Court vide judgement dated November 21, 1983. Letters Patent Appeal No.28/84 filed by the Gujarat Agricultural University against the said judgement was also dismissed. In view of the order of the High Court, the petitioner was posted as Audit Officer, at Navsari by an order dated March 9, 1984 and his Efficiency Bar was released. His pay was fixed as per the judgement of the High Court and he was also granted full backwages on the basis that the reversion order was invalid. The grievance made by the petitioner is that the directions issued by the High Court in Special Civil Application No.571/80 were not complied

with by the respondent and the pay of the petitioner should have been fixed in the scale of Rs.700 - 1500 from December 10, 1980 and in the scale of Rs.1100 - 1600 from April 27, 1987. What is pleaded by the petitioner in the petition is that the notice dated August 21, 1984 calling upon the petitioner to show cause as to why departmental inquiry should not be initiated against him is illegal inasmuch as it relates to incidents of 1972 and 1975-76 for which proposed action in the year 1984 could not have been initiated. Under the circumstances, the petitioner has filed the present petition and claimed the reliefs to which reference is made earlier.

3. Mr. V.P.Macwan, Assistant Registrar [Administration] of the Gujarat Agricultural University has filed reply affidavit controverting the averments made in the petition. In the reply, it is stated that the judgement of the High Court rendered in Special Civil Application No.571/80 is fully implemented and all the benefits contemplated under the said judgement have been made available to him. It is averred in the reply that, in the departmental inquiry which was held against the petitioner, the disciplinary authority by his order dated August 25, 1982 had inflicted the penalty of reduction in salary by two stages on the petitioner and then he was transferred from Anand to Vijapur as Office Superintendent, as a result of which, the petitioner is not entitled to the reliefs claimed in the petition. What is asserted in the reply is that his further promotion would depend upon the result of the inquiry which is initiated against him pursuant to notice dated August 21, 1984 and as the notice dated August 21, 1984 calling upon him to show cause as to why the departmental inquiry should not be initiated against him, is legal and valid, the petition should be dismissed.

4. Mr. Y.N.Oza, learned counsel for the petitioner submitted that, in view of the judgement of the High Court rendered in Special Civil Application No.571/80, the petitioner is entitled to be promoted to the post of Auditor Gr.I in the pay scale of Rs.700 - 1500 from December 10, 1987 as well as to further promotion in the pay scale of Rs.1100 - 1600 from April 27, 1987 and therefore, the petition should be accepted. It was pleaded that the notice dated August 21, 1984 calling upon the petitioner to show cause as to why disciplinary action should not be initiated against the petitioner being null and void, should be set aside. What is claimed by the learned counsel for the petitioner is that the promotion to higher post is governed by the criterion of seniority cum merit and as the respondents have

concluded that the petitioner is positively demeritorean, the petition should be accepted.

5. Mr. S.N.Shelat, learned counsel for the University has contended that the order passed by the High Court in Special Civil Application No.571/80 is fully implemented and the petitioner is not entitled to higher pay scale as claimed in the petition on the basis of said judgement. Learned counsel for the respondent further submitted that, pursuant to departmental inquiry, which was held against the petitioner, after service of notice dated August 21, 1984, the service of the petitioner were terminated which order was challenged by the petitioner in the High Court and the High Court had directed the petitioner to file departmental appeal in which the order terminating the services of the petitioner was set aside and penalties of reduction in pay scale by one stage as well as compulsory retirement from services were imposed by an order dated September 5, 1994 which is not challenged by the petitioner, and therefore, the petition should be dismissed.

6. I have heard the learned counsel for the parties.

A bare reading of the affidavit in reply filed on behalf of the respondent makes it clear that the judgement of the High Court which was delivered in Special Civil Application No.571/80 is fully complied with. The petitioner has not pointed out as to which direction issued by the High Court is not complied with. Learned counsel for the respondent has produced on record order dated September 5, 1994 passed by the Vice Chancellor, Gujarat Agricultural University, Dantiwada. It is ordered to be taken on record of the case. It indicates that, after issuance of the show cause notice dated August 21, 1984, a departmental inquiry was held and at the conclusion of the inquiry, his services were terminated. That order was challenged by the petitioner before the High Court and High Court had directed the petitioner to avail of alternative remedy of preferring departmental appeal. The order dated September 5, 1994 of the Vice Chancellor, Gujarat Agricultural University further shows that the appeal was accordingly filed by the petitioner which was accepted and after setting aside the order terminating his services, punishments of reduction in pay scale by one stage and compulsory retirement from service were imposed on the petitioner w.e.f. July 13, 1993. The fact that, in the departmental inquiry, punishments as mentioned in order dated September 5, 1994 were imposed on the petitioner is not in dispute. In view of the punishments imposed on the petitioner in departmental inquiry, I am of the view

that the petitioner is not entitled to be promoted to the post of Auditor Gr.I in the pay scale of Rs.700 - 1500 from December 10, 1980 and to further promotion in the pay scale of Rs.1100 - 1600 from April 27, 1987. It may be stated that the order dated September 5, 1994 passed by the Gujarat Agricultural University is not challenged by the petitioner at all and has become final between the parties. As far as validity of notice dated August 21, 1984 calling upon the petitioner to show cause as to why departmental inquiry should not be initiated against him is concerned, it is relevant to notice that the operation of the said notice was never stayed during the pendency of the petition. As a result, the departmental inquiry was conducted against the petitioner and punishments as mentioned in order dated September 5, 1994 of Vice Chancellor, Gujarat Agricultural University were imposed on the petitioner. The subsequent events show that the show cause notice cannot be set aside, because, it has ultimately culminated into order of punishment being imposed on the petitioner and the order of punishment is not challenged by the petitioner at all.

7. Therefore, I am of the opinion that the petitioner is not entitled to the reliefs claimed in the petition and the petition is liable to be dismissed.

8. For the foregoing reasons, the petition fails and is hereby dismissed. Rule is discharged with no orders as to costs.

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